IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1763 OF 2006

Sadhuram Kuberdas Patel ...Petitioner
vs.
Laxminarayan Kaikani & Anr. ...Respondents

Mr.Gajendra Jadhav for the Petitioner
Ms S.V.Gajare,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 22, 2006.

P.C.:

1. Heard learned Advocate for the Petitioner. The Petitioner is arraigned as an accused in a complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act of 1881) filed by the first Respondent. The learned Magistrate issued process on the complaint. Revision Application preferred by the Petitioner has been rejected by the Sessions Court upholding the order issuing process.

2. The learned Advocate for the Petitioner submitted that the learned Sessions Judge has taken hypertechnical view of the matter and has not condoned the delay in preferring the Revision Application. He submitted that there was non-compliance with requirement of section 141 of the said Act of 1881 as necessary averments have not been made in the complaint.

3. I find that though the learned Additional Sessions Judge was of the view that sufficient cause was not made out, he has considered the merits of the Revision Application in detail and the submission which is made in this Petition was also

considered by the learned Sessions Judge.

4. In paragraph No.9 of the complaint it is stated that the Petitioner herein is the Chairman of the accused No.1-Company and accused Nos.3 and 4 are the active Directors and all three of them were in active charge of management and control of the affairs of the accused No.1-company. In my view, the substance of the allegations made in the complaint fulfil the requirements of the section 141 of the said Act of 1881. In case of Monaben Ketanbhai Shah and another Vs. State of Gujrat reported in 2004 (7) S.C.C. page 50, the Apex Court held that where after reading the complaint as a whole, it is found that factual foundation for the offence has been made in the complaint, it should not be quashed. I find that factual foundation for the offence was made in the complaint and therefore, the process has been issued.

5. The learned Counsel for the Petitioner submitted that the age of the Petitioner is 86 years. That is no ground to interfere with order issuing process. However, it will be open for the Petitioner to apply to the concerned Court for grant of exemption. If such application is made, the same will be considered by the concerned Court by passing an appropriate order.

6. Subject to what is stated above, Petition is rejected.

7. All contentions in the pending complaint are expressly kept open.

JUDGE